



August 28, 2024

Mr. William K. Smith
South Dakota Conservation Commission
Department of Agriculture and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501

Dear Mr. Smith:

The Legislative Research Council (LRC) received proposed rules from the South Dakota Conservation Commission on August 15, 2024. In accordance with SDCL 1-26-6.5, the LRC reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommendations.

Please find enclosed:

- Proposed Rules Review Checklists;
- The proposed rules with recommended form, style, and clarity edits;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

In addition to the recommendations provided in the enclosed packet, LRC identifies the following issue:

- The Form 6 - Notice of Hearing, per SDCL 1-26-4.1, requires "a narrative description of the effect of the proposed rule and the reasons for adopting the proposed rule." The notice submitted by the Commission restates the reason for the proposed rule as its "effect"--that the effect is to make administrative rule consistent with statutory changes from the 2024 legislative session. The public, therefore, has very little information about the effect of the rules. There is a better explanation of the effect of the proposed rule changes in the Form 14 - Small Business Impact Statement. There it conveys that the rules will change some references from "soil" to "natural resources" to better reflect the work of conservation districts, will update an out-of-date reference to state law, and will add "soil health" as one of the eligibility criteria for the conservation award program. In future notices, please be sure to describe the effect as distinct from the reason for a proposed rule.

Under SDCL 1-26-4(4), the Commission is required to adopt LRC recommendations, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination. Note, however, that LRC reserves the right to withdraw recommendations if they are resolved via discussion with Commission staff.

Please do not hesitate to contact me if you have any questions or to discuss and possibly resolve any of the recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin J. Goetz". The signature is stylized and fluid.

Justin J. Goetz
Code Counsel
Enclosures

CC: Hunter Roberts, Secretary, Department of Agriculture and Natural Resources

**Legislative Research Council
Proposed Rules Research Review Checklist**

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

“No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.” (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY:	"[Initials]"	"N/A"	"[Initials]*"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue

1. Verify the rules packet includes ([SDCL 1-26-4\(2\)](#)):
 - a. The proposed rules: _____
 - i. Any incorporated material: _____
 - b. Notice of hearing (Form 6): _____

2. Verify all documents have correct citations to the proposed rules provided in the packet. _____

3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. ([SDCL 1-26-4\(1\)](#)) _____

- 4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.**

5. Review proposed rules for:
 - a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language). _____
 - i. Verify the most recent rule is used. ([Manual](#), pg. 5) _____
 - ii. Verify all cross-references in text are current. ([Manual](#), pg. 6) _____
 - iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. ([Manual](#), pg. 6) _____
 - iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. ([Manual](#), pg. 7) _____

b. Legality, including:

- i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ([Manual](#), pg. 8) _____
- ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ([Manual](#), pg. 8) _____
- iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ([SDCL 1-26-6.6](#); [Manual](#), pg. 11) _____

For incorporated material that is not CFR, USC, Fed. Reg., Stat.:

 - 1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained. _____
 - 2. Verify there is a statement attached to the material that includes the agency’s name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC. _____
- iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. ([SDCL 1-26-6.1](#)) _____
- v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ([SDCL 1-26-6.10](#)) _____
- vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ [23\(9\)](#), [26](#)) _____
- vii. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (See SDCL [1-26-4](#), [1-26-6.5](#), [1-26-6.6](#), [1-26-38\(2\)](#)) _____
- viii. Verify the rule does not contain the agency's internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per [SDCL 1-26-1\(8\)](#). _____
- ix. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of another state or the federal government. ([State v. Johnson, 84 S.D. 556, 173 N.W.2d 894](#) (1970)) _____
- x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. ([Manual](#), pg. 8) _____

6. Review Notice of Public Hearing ([SDCL 1-26-4.1](#)):

- a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing. _____

- b. Verify the notice contains a narrative description of the effect of the proposed rule. _____
 - c. Verify the notice contains the reason for adopting the proposed rule. _____
 - d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing. _____
 - e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented. _____
 - f. Verify the notice contains a deadline for submission of comments. _____
 - i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. ([SDCL 1-26-4\(6\)](#)) _____
 - ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). ([SDCL 1-26-4\(6\)](#)). _____
 - g. Verify the notice contains information for how the public may obtain copies of the proposed rules. _____
7. For any proposed rule regarding professional or regulatory examination or licensing that is to be published in pamphlet form, review the pamphlet for style, form, and clarity in accordance with the Administrative Rules Drafting Manual. ([SDCL 1-26-11](#)) _____

Reviewed by Code Counsel on _____

**Legislative Research Council
Proposed Rules Fiscal Note Review Checklist**

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

“No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.” (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY:	"[Initials]"	"N/A"	"[Initials]*"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue

1. Verify the rules packet includes ([SDCL 1-26-4\(2\)](#)):
 - a. Fiscal note (Form 5): _____
 - b. Small business impact statement (Form 14): _____
 - c. Housing Cost Impact Statement (Form 16), if applicable: _____

2. Review proposed rules for:
 - i. If the rule increases a fee, verify the agency provided information regarding financial resources available to the agency: beginning fund balance, receipts, disbursements, and ending fund balance for each of the last two fiscal years, as well as beginning fund balance, projected receipts, projected disbursements, and ending balance for current and next fiscal years. ([SDCL 1-26-4.8](#)) _____
 - ii. If the rule increases a fee by a licensing board or commission, verify the fee increase is “reasonable and necessary” in accordance with [SDCL 1-26-6.9](#). _____

3. Review the Fiscal Note ([SDCL 1-26-4.2](#)):
 - a. Verify the Fiscal Note states whether the proposed rule will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions: _____
 - i. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed? _____
 - ii. If there is an effect on subdivisions, is that effect described? _____

4. Review Small Business Impact Statement ([SDCL 1-26-2.1](#)):

- a. Verify if the rule change has any small business impact based on readily available info: _____
 - i. If only INDIRECT, verify that a brief description of the impact is included. _____
 - ii. If DIRECT, review 4.b through 4.h:
- b. Verify the Impact Statement includes a narrative explanation in plain, easy-to-read language. _____
- c. Verify the narrative explanation discusses the effect of the proposed rule on small business, including the basis for the rule's enactment and why the rule is needed. _____
- d. Verify the narrative explanation includes an identification and estimated number of small businesses subject to the proposed rule. _____
- e. Verify the Impact Statement includes the projected reporting and record-keeping required for compliance with the proposed rule. _____
- f. Verify the Impact Statement includes the types of professional skills necessary for preparation of required reports or records. _____
- g. Verify the Impact Statement includes a statement of the probable effect on impacted small business. _____
- h. Verify the Impact Statement includes a description of any less intrusive or less costly alternative methods of achieving the proposed rule's purpose. _____

5. Review Housing Cost Impact Statement ([SDCL 1-26-2.3](#)), if applicable:

- a. Verify that the agency has indicated what building sectors will be impacted by the rule change. _____
- b. Verify a description of and explanation of necessity for each standard and requirement is included. _____
- c. Verify the statement includes the average estimated cost of each standard and requirement. _____
- d. Verify that contact and estimate information is included for three licensed contractors or building trades professionals. _____

Reviewed by Code Counsel on _____

CHAPTER 12:03:01

Commented [A1]: Form- Ensure that each section of rule appears on a separate page. ARSD DM, pg. 5. Here, the chapter index could be reformatted to fit on one page, and then each rule section thereafter should have a page break at its end. That also includes a page break between the last section and the appendix.

GENERAL ADMINISTRATION

Section

- 12:03:01:00 Definitions.
- 12:03:01:01 Designation of vice-chairman.
- 12:03:01:02 to 12:03:01:04 Repealed.
- 12:03:01:05 Conservation district supervisor elections.
- 12:03:01:05.01 Definition -- Urban area, Repealed.
- 12:03:01:06 Commission to keep records on district supervisors.
- 12:03:01:07 Oath of office to be administered to supervisors.
- 12:03:01:08 Assistance to districts.
- 12:03:01:09 to 12:03:01:12 Repealed.
- 12:03:01:13 Hearings to be held in presence of commission member.
- 12:03:01:14 Record of proceedings to be compiled.
- 12:03:01:15 to 12:03:01:18 Repealed.
- 12:03:01:19 Transferred.
- 12:03:01:20 Commission to act on petition for referendum.
- 12:03:01:21 Hearing on sufficiency of petition for dissolution -- Burden of proof --
Decision by commission.
- 12:03:01:22 to 12:03:01:30 Repealed.
- 12:03:01:31 Criteria for establishing priorities in watershed planning.

STATE CONSERVATION COMMISSION
12:03:01:32 Forms for reports -- District fiscal year.

12:03

Appendix A, Forms for reports.

12:03:01:05.01. Definition -- Urban area. ~~For the purpose of district supervisor elections, "urban area" means any municipality as defined in SDCL 9-2-1 and any unincorporated municipality that is not prohibited from incorporating by SDCL 9-3-1 Repealed.~~

Source: 16 SDR 75, effective October 30, 1989; 21 SDR 90, effective November 14, 1994.

~~— **General Authority:** SDCL 38-7-8, 38-8-39.~~

~~— **Law Implemented:** SDCL 38-8-39.~~

CHAPTER 12:03:06

~~SOIL~~ NATURAL RESOURCES CONSERVATION AWARD PROGRAM

Commented [A2]: Form - If there is going to be a change in the heading of the chapter, then the index for the article also needs to be shown, at the beginning of this packet, with the change made to it. Please see ARSD DM, pg. 35, for an example.

Section

- 12:03:06:01 Definitions.
 - 12:03:06:02 Purpose.
 - 12:03:06:03 Eligible recipients.
 - 12:03:06:04 Nominations.
 - 12:03:06:05 Nomination form and procedures.
 - 12:03:06:06 Selection criteria.
 - 12:03:06:07 Award selection committee.
 - 12:03:06:08 Selection of award recipients.
 - 12:03:06:09 Number of awards per conservation district.
 - 12:03:06:10 Submittal of selections to State Conservation Commission.
 - 12:03:06:11 Sign and certificate.
 - 12:03:06:12 Sign display and placement guidelines.
 - 12:03:06:13 Multiple awards.
 - 12:03:06:14 Award presentation ceremonies.
 - 12:03:06:15 Awareness and publicity.
- Appendix A Nomination Form For Award Winning ~~Soil~~ Natural Resources Conservation Farm/Ranch

12:03:06:01. Definitions. Terms used in this chapter mean:

(1) ~~"Resident of South Dakota," a person, firm, or corporation, public or private, who has legal title to or is a legal lessee, renter, or tenant of any agricultural crop, grazing, or forest land within the state;~~

(2) "Active agricultural producer," ~~any a person who is producing;~~

(a) Producing or causes to be produced an agricultural commodity in a quantity beyond the person's ~~own~~ family use and is able to transfer title or sell the commodity to another; ~~or a forest landowner managing their~~

(b) Managing the land the person owns for long-term forestry uses; and

~~(3)~~ (2) "Outstanding farming or ranching practice," a practice that demonstrates outstanding land stewardship.

Source: 35 SDR 165, effective December 22, 2008.

General Authority: SDCL 38-7-30.

Law Implemented: SDCL 38-7-29, 38-7-30.

12:03:06:02. Purpose. ~~The purpose of the soil conservation award program is to recognize active agricultural producers that demonstrate exemplary farming or ranching practices that conserve soil and other natural resources in South Dakota and prevent their loss or damage~~ Repealed.

Repealed.

Commented [A3]: Clarity - There is content missing from the current language of rule - "producing" - that is not accounted for here. It is the result of a tech error on LRC's end. We've added it back in.

Commented [A4]: Deleted text should begin right after the period behind "Purpose" so that it includes that space before the deleted text. At the other end of the sentence, the underscored material should include not only the word "Repealed," but also the added space in front of it. A good example is on p. 32 of the Administrative Rules of South Dakota Drafting Manual.

Source: 35 SDR 165, effective December 22, 2008.

General Authority: SDCL 38-7-30.

Law Implemented: SDCL 38-7-29, 38-7-30.

12:03:06:03. Eligible recipients. A recipient of a ~~soil~~ natural resources conservation award must be a resident of South Dakota and directly and actively engaged in agriculture within the state meet the requirements in SDCL 38-7-29. ~~Recipients of a soil conservation award~~ The following persons are not eligible to receive ~~another~~ a natural resources conservation award:

Commented [A5]: This entire section is difficult to read and it might be easier to simply strike everything after "Eligible recipients" and recast it as you've done. As it is, there are some added words that got lost in the revisions and were not marked as new language. Edit for form and clarity.

Commented [A6]: Text should show strikethrough to demonstrate there is a deleted space in front of the deleted word "soil." The space immediately after "soil" needs underscoring to show it has been added along with "natural resources." Edit for style.

(1) A recipient of a natural resources conservation award within the same conservation district for up to five years after the date of the award. Conservation prior;

Commented [A7]: Need an added space in in front of "meet the requirements," and the added space should be underscored. Edit for style.

(2) A conservation district supervisors are not eligible to receive an award ~~supervisor~~ while serving on the board of supervisors. Advisors to the supervisor;

Commented [A8]: These words don't appear to be in the original rule and need to be underscored to show they are added. Edit for form. See top of p. 6, Administrative Rules of South Dakota Drafting Manual.

(3) Advisors to the board of supervisors are not eligible; and

Commented [A9]: Move "supervisor" to the end of the sentence for ease of reading and keep the semicolon (remove the strikethrough). Edit for clarity and style. See p. 6, ARSD Drafting Manual, "new material always follows stricken material."

(4) State Conservation Commission members are not eligible to receive an award while serving on the commission.

Source: 35 SDR 165, effective December 22, 2008.

General Authority: SDCL 38-7-30.

Law Implemented: SDCL 38-7-29, 38-7-30(4).

12:03:06:04. Nominations. Any current resident or any group within South Dakota may nominate an eligible agricultural producer for a ~~soil~~ natural resources conservation award.

Commented [A10]: This space after "resources" need not be underscored, as it is not added. Edit for style. An example of how to replace a word with another in text, or how to add multiple words, is in subsection 5 of the example on p. 34, ARSD Drafting Manual.

STATE CONSERVATION COMMISSION

12:03

Nominations must be submitted to the conservation district where the outstanding practices are located. Nominations must be received by the conservation district by no later than January ~~→~~ first of each ~~calendar~~ year.

Source: 35 SDR 165, effective December 22, 2008.

General Authority: SDCL 38-7-30.

Law Implemented: SDCL 38-7-29, 38-7-30(2).

12:03:06:06. Selection criteria. An award recipient must demonstrate that the recipient is implementing land management practices that exemplify outstanding land stewardship and protect or enhance natural resources on the recipient's property. The recipient must be using one or more of the following practices:

- (1) Grassed waterways are properly installed and maintained;
- (2) ~~Installed terraces~~ Terraces are properly installed and maintained;
- (3) Crop rotations are used;
- (4) Sufficient crop residues are left to protect and enhance soil stability;
- (5) ~~No-till~~ No-till is used in crop production;
- (6) Grasslands are managed for sustainable productivity;
- (7) Livestock are managed to limit soil and nutrient runoff; ~~and~~
- (8) Forest lands are managed according to a forest stewardship plan; and
- (9) Cover crops and other soil health practices are implemented.

Commented [A11]: A hyphen in "no-till farming" or its variations, even where the noun is only implied, seems to be the way grammarians and some land-grant colleges and ag publications prefer. See page 17-18 of ARSD Drafting Manual. "No-till farming" is hyphenated in the statute this rule cites for general authority, SDCL 38-7-30.

Source: 35 SDR 165, effective December 22, 2008.

General Authority: SDCL 38-7-30.

Law Implemented: SDCL 38-7-29, 38-7-30(1).

12:03:06:10. Submittal of selections to State Conservation Commission. By April ~~4~~ first of each ~~calendar~~ year, any selections made by the selection committee ~~shall~~ must be forwarded to the State Conservation Commission, South Dakota Department of Agriculture and Natural Resources, ~~Soil Natural Resources~~ Conservation Award Program, 523 East Capitol Ave., Pierre, SD 57501.

Source: 35 SDR 165, effective December 22, 2008; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

General Authority: SDCL 38-7-30.

Law Implemented: SDCL 38-7-29, 38-7-30(2).

SOUTH DAKOTA CONSERVATION COMMISSION

NOMINATION FORM FOR AWARD WINNING ~~SOIL~~ NATURAL RESOURCES

CONSERVATION FARM/RANCH

Chapter 12:03:06

APPENDIX A

SEE: § 12:03:06:05

STATE CONSERVATION COMMISSION

12:03

Source: 35 SDR 165, effective December 22, 2008; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

SOUTH DAKOTA ~~SOIL~~ NATURAL RESOURCES CONSERVATION AWARD

NOMINATION FORM

AWARD WINNING ~~SOIL~~ NATURAL RESOURCES CONSERVATION FARM/RANCH

Name of Nominee: _____

Mailing Address: _____

City, State, Zip: _____

Conservation District: _____

Nomination submitted by: _____

Mailing Address: _____

City, State, Zip: _____

Telephone: _____

(Nominator's information intended only for use by the selection committee in case further clarification is needed pertaining to the nomination.)

Which of the following criteria/practices are used by the nominee? (Check all that apply)

- Grassed waterways are installed and maintained properly
- Terraces are installed and maintained properly
- Proper crop rotations are utilized.
- Sufficient crop residues are left to enhance soil stability
- ~~No-till~~ No-till is utilized in crop production
- Grasslands are managed for sustainable productivity
- Livestock are managed to limit soil and nutrient runoff (feedlot and riparian buffers)
- Forest lands are managed according to a forest stewardship plan
- Cover crops and other soil health practices are implemented

Commented [A12]: Each of these statements is a complete sentence, yet only this sentence is given a period. For uniformity, perhaps add the periods for all the sentences, or remove the period from this one. Edit for style.

Based on the above checked items, explain why you feel this nominee is deserving of the award. Use no more than one additional sheet if necessary. Please submit two to eight photographs no larger than 5 X 7, with a brief caption (50 words or less) for each. Digital photos are acceptable.

FORM 15

Rules Presentation Format

Department/Board/Commission Name _____

Please complete these questions to show that the SDCL 1-26 rule-making process is complete.

Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes _____ No _____ Date _____

- Date of public hearing _____

- Date proposed rules and supporting documents submitted to the LRC and the Bureau of Finance and Management _____
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.

- Date and name of newspapers in which the notice of public hearing was published:
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____

- Summary of how, when, and number of interested persons, if any, were contacted.

- Page numbers in the minutes where the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action.

- For any rule implementing a bill from a preceding session, the number of the bill:

- Date final rules and supporting documents submitted to the LRC and the Committee

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

Rules Review Meeting Schedule for the 2024 Interim: The Interim Rules Review Committee will meet April 15, May 7, June 10, July 23, August 20, September 10, and October 22. Meeting notices will be posted on the LRC website and at the Capitol.

A. Committee: The following materials must be served on the Committee at least seven calendar days before the committee meeting via first-class mail, e-mail, or both:

1. Form 12 – Affidavit and all its referenced documents (for final rules, please three-hole punch and number by page the final rules):
 - a. Form 10 – Minutes of Public Hearing;
 - b. A record of written comments;
 - c. Form 14 – Small Business Impact Statement;
 - d. Form 5 – Fiscal Note;
 - e. For any rules that increase a fee, per SDCL 1-26-4.8, the agency's financial resource information;
 - f. For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, the Form 16 – Housing Cost Impact Statement; and
 - g. The final rules as adopted;
2. Form 15 – Rules Presentation Format;
3. First draft of proposed rules containing LRC recommendations for style, form, clarity, and legality; and
4. Letter from the LRC to the agency.

B. Legislative Research Council: The following materials must be submitted to the LRC at least five days before the committee meeting:

1. Final draft of adopted rules, double-spaced and containing only amended, repealed, or adopted rules, and showing overstrikes and underscores;
2. Original Form 11; and
3. Copies of:
 - a. Form 10 – Minutes of Public Hearing;
 - b. Form 15 – Rules Presentation Format; and
 - c. Form 12 – Affidavit of Mailing to Rules Committee.

C. Office of the Secretary of State: Following Committee hearing, each agency must complete and sign all documents before filing:

1. Form 13 - Certificate of rule completion;
2. Final draft of the adopted rules; and
3. Form 11 (per Secretary's request).